IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No. 170 of 2005
with
COMPANY PETITION No. 171 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VAIKUNTH PACKAGING LIMITED - Petitioner(s)

Versus

.... - Respondent(s)

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Appearance :
MRS SWATI SOPARKAR for Petitioner(s) : 1,
MR PJ MALKAN for Respondent(s) : 1,
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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 01/03/2006

COMMON **ORAL JUDGMENT**

1.These are the petitions filed by two petitioner companies for sanction of a Scheme of amalgamation

of Vaikunth Packing Limited (the Transferor Company) with Purity Flexpack Limited (the Transferee Company) under Section-391 read with Section 394 of the Companies Act, 1956.

2. Vaikunth Packing Limited, the Transferor Company is a closely held public limited company situate at Vadodara and is engaged in the business of manufacturing Multi Layer Flexible Packing material and allowed items. It is a profit making company. Purity Flwexpack Limited, the Transferee Company on the other hand, is a listed public limited company engaged in manufacturing of flexible packing material printed / unprinted in the form of roll and pouch/bags. The company suffered a set back in its operations due to workers' strike in 1997-98. However, it is now making operative profits. The capital of the company was reduced during 2004 under due process of law. Since both the companies are engaged in the similar line of products, and are managed by the same group of management, the amalgamation is proposed for the synergic

advantages. The petitions give details of the advantages that would flow by virtue of the amalgamation of these companies.

3. The proposed scheme was approved unanimously by Equity Shareholders of the Transferor company through written consent letters and therefore, vide order dated 9.9.2005 passed by the learned Single Judge of this Court passed in Company Application No.304 of 2005, a meeting of the equity shareholders of the transferor company as required to be convened under Section-391 of the Companies Act, 1956 was dispensed with. The proposed scheme was unanimously approved by secured and unsecured creditors of the transferor company at the respective meetings convened pursuant to the directions given by the order dated 9.9.2005 in Company Application No.304 of 2005. The result of the said meeting and reports of the Chairman are already on record. The said proposed scheme was also unanimously approved at the meeting of the shareholders of the transferee company at the duly

convened meeting pursuant to the directions issued by this Court issued vide order dated 9.9.2005.

4. After the petitions were admitted, the same were duly advertised in the newspapers viz. Indian Express, English daily Vadodara edition dtd.12th November, 2005 and Loksatta Jansatta, Gujarati daily Vadodara edition dated 11th November, 2005 and the publication in the Government gazette was dispensed with as directed in the order dated 27.10.2005. No one has come forward with any objections to the said petitions even after the publication.

5. Notice of the petition of the Transferor company was served upon the Official Liquidator attached to the Gujarat High Court. Vide the report dated 23.1.2006, filed by the Official Liquidator, it is observed that the affairs of the Transferor companies have not been conducted in a manner prejudicial to the interest of their members or to the public interest.

6. Notice of the petitions are served upon the Central Government and along with the affidavit dated 30.1.2006 the Registrar of Companies (Gujarat) has placed on record the letter dated 9.1.2006 received from the Regional Director who has made certain observations which reads as under :

(a) The petitioners may be directed to furnish No Objection Certificate from Bombay Stock Exchange.

(b) The petitioners may be directed to furnish latest financial position at the time of final hearing.

(c) The transferor company is a listed company and they have foreign/NRI shareholding. Hence, the company may be directed to obtain NOC from RBI, if necessary.”

7. On behalf of the petitioners companies, common affidavit dated 16.2.2006 is filed by the Director

of the petitioner companies explaining the contention of the companies' on the issues raised in the letter dated 9.1.2006.

8.With regard to the objection / observations made in para-(a) of the letter dated 9.1.2006 it is submitted in the additional affidavit that the company had submitted the scheme of amalgamation to both the Stock Exchanges for its approval vide letter dated 23.6.2005 and pursuant to this, Vadodara Stock Exchange had issued letter of approval on 29.7.2005. It is also further submitted that in its pursuit ob obtaining the approval of Bombay Stock Exchange, the company had supplied all the necessary information as and when called for and was hopeful of getting the approval from the said Stock Exchange. It is also further submitted that having obtained approval from the Vadodara Stock Exchange and having fulfilled the time limit of one month, the company has presented its application to this Court on 2.9.2005. It is also further submitted that provision of the Companies

Act, 1956 does not require production of said letter or approval before the Stock Exchanges for the sanction of the proposed scheme and hence, the same were not placed on record. However, it is submitted that copy of the said letter of intimating stock exchanges seeking their approval as well as the approval granted by the Vadodara Stock Exchange are annexed with the additional affidavit. Meeting with the observation / objection as per Issue (b), it is submitted that additional affidavit that under the provisions of the Act, the petitioners companies are required to produce latest audited accounts for the relevant financial year and the same being the financial year 200-4-05, the petitioner already annexed the audited accounts as on 31.3.2005 along with respective petition. It is also further submitted in further affidavit that next financial year is yet not completed and the accounts are not yet audited, however, they have produced the latest financial position in the form of the provisional balance sheet and the provisional profit and loss accounts

for the period of nine months of the current financial year as on 31.12.2005.

9.So far the issue (C) is concerned, Mrs.Swati Saurabh Soparkar, learned advocate for the petitioners has relied upon clause-7(iv) of the proposed scheme of the amalgamation. She has submitted that as per the proposed scheme, on sanctioning of the scheme and before the allotment of the shares to the shareholders of the transferor company pursuant to the scheme, the transferee company shall obtain necessary permission from the Reserve Bank of India for the said allotment and it is also further submitted that the company through the deponent undertakes to obtain the same on sanction of the scheme.

10.I have heard Smt.Swati Soparkar, learned advocate appearing on behalf of the petitioners companies. Considering the additional affidavit and the averments therein which are stated hereinabove and considering necessary documents produced along with

main company petition as well as additional affidavit, I am satisfied that the observations made by the Regional Director do not survive and the amalgamation would be in the interest of the companies and their members and creditors. Therefore, prayer in terms of para-22[A] in case of Company Petition No.170 of 2005 and para-20[A] in Company Petition No.171 of 2005 are hereby granted.

11.Both these petitions are disposed of accordingly. So far as the cost to be paid to the Additional Standing Counsel for the Central Government is concerned, the same is quantified at Rs.3,500/- per petition and the same be paid to Shri P.J.Malkan, Additional Standing Counsel for the Central Government.

[M.R.Shah, J.]

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